

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**SHERIF T. ELAMIR and
JANET L. ELAMIR, and as
parents of NORAH ELAMIR
and HANNAH ELAMIR,**

Plaintiffs,

v.

CIV. NO. 07-427 KBM/ACT

**RON ROCKRANDT d/b/a
RED RIVER CONSTRUCTION
COMPANY, et al.,**

Defendants.

FINDINGS AND RECOMMENDATION¹

THIS MATTER came before the Court on a Stipulated Motion for Approval of Minors' Settlements filed May 9, 2008 [Doc. 40].² The Court conducted a fairness hearing on June 25, 2008. Kerry Morris was appointed the *guardian ad litem* for Norah Elamir on June 3, 2008. [Doc 93.] Kerry Morris filed a "Guardian Ad Litem's Evaluation and Recommendation of Proposed Minor Settlement" ("Evaluation") on June 19, 2008. [Doc. 96.]

Findings

Plaintiffs filed their Complaint on May 3, 2007, alleging they became sick and required medical attention after exposure to carbon monoxide poisoning. The facts of the incident are not in dispute however, liability is contested.

¹Parties were advised of their right to file objections to this report and recommendation within ten days pursuant to 28 U.S.C. § 636(b)(1). However, in order to expedite the approval of this settlement, counsel agreed at the May 12, 2008, hearing that they had no objection to the Court's recommended disposition and would waive the ten-day period.

²An Order of Reference [Doc.98] was filed on July 15, 2008.

On December 24, 2004, the Elamirs were staying at their Red River vacation home when Norah fainted while taking a shower. Her father, who is a physician, examined her and determined she was suffering from oxygen deficiency. Norah was transported by ambulance to Holy Cross Hospital where she was diagnosed with carbon monoxide poisoning. Norah was admitted to the hospital and discharged the next day, December 25, 2004.

Norah was born on July 23, 1992. Norah's parents, Sherif Elamir and Janet Elamir, divorced in 2007. Janet Elamir has voluntarily dismissed all of her claims with prejudice [Doc. 84].

Norah's total medical expenses are \$9,351.40

The entire claim was settled for \$40,000. Norah's share of the settlement is \$25,000. After attorneys fees of \$7,576.66, gross receipts tax of \$520.89 and costs of \$624.70, the net amount Norah will receive is \$16,277.75. This money will be paid to Dr. Elamir to hold in trust until she is eighteen years old and then will be used for her college tuition.³

Dr. Elamir understands that this is all the money Norah will receive for her injuries related to the carbon monoxide poisoning on December 24, 2004.

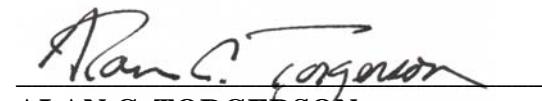
Conclusions of Law and Recommendation.

After consideration of the evidence and the testimony of the witnesses, as well as the presentation of counsel, the Court concludes that it has jurisdiction over the parties and subject matter.

The Court further concludes that the settlement is fair and reasonable under the circumstances, and acceptance of the settlement is in Norah's best interests.

³The Evaluation states that Norah and her father wanted to use all or a portion of the settlement proceed to purchase a new car. At the hearing Dr. Elamir agreed not to use any of the proceeds to purchase a car but rather for Norah's college tuition. [Doc. 96.]

The Court therefore recommends that the settlement be approved and that the claims against all the Defendants be dismissed with prejudice.


ALAN C. TORGERSON
United States Magistrate Judge